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STATE FOR P, SCA/FO (DAS GASTRIGHT), SCA/A (SINGRAM), S/WCI
(MSTAMILIO, MSHIN), L/PM (EPELOFSKY)
NSC FOR AHARRIMAN
OSD FOR ARICCI
CENTCOM FOR CG CJTF-82, POLAD, CSTC-A, SOUTHCOM, JTF-GTMO

E.O. 12958: DECL: 04/03/2017
TAGS: [KAWC](#) [MARR](#) [PTER](#) [PGOV](#) [PINS](#) [PREL](#) [AF](#)
SUBJECT: DETAINEE LEGAL FRAMEWORK: PALACE CONVENES DETAINEE
REVIEW BOARD APRIL 8

REF: A. KABUL 01091
[B](#). KABUL 01078
[C](#). KABUL 00956
[D](#). KABUL 0806

Classified By: Acting DCM Carol A. Rodley; reasons 1.4(b) and (d)

[1](#)1. (S/NF) Summary: Post continues to encourage the Office of the National Security Council (ONSC) to exert both executive and administrative leadership regarding detainee issues as we press for the remaining pieces of a legal framework. Post continues to explore ONSC and parliamentary views on indefinite detention as we focus the GOA Detainee Review Board (DRB) on the practical issues surrounding the return of detainees to GOA custody and preparations for prosecution. End Summary.

ONSC Detainee Review Board, Legal Framework Leadership

[1](#)2. (S/NF) Following the opening of the Afghan National Detention Facility (ANDF) on March 25 (reftel B), Deputy polmilcouns and polmiloff met with three Office of the National Security Council (ONSC) officials on April 1: Malik Quraishi, Director of Policy and Oversight; Zia Mohammed Salehi, Situation Room Director; and Abdullah Popal, Director of Internal Policy. The officials acknowledged ONSC leadership was necessary to bring disparate parts of GOA together to coordinate the proper handling of detainees and the practical aspects of the legal framework. We reminded them that we await certification from DNSA Ibrahim that responses received to date constitute a collective GOA response on the legal framework issue (reftel C). We believe the delay in receipt of this document is due to lack of coordination among officials who frequently travel, have minimal support staff, and have other responsibilities. We reiterated to the ONSC representatives that we have been assured verbally that indefinite detention is an option for "exceptional" cases (reftel D) that cannot be prosecuted and again requested written assurance of this. Quraishi said it might be difficult to provide anything in writing on this "political" issue. Polmiloffs also requested clarification of the type of mentoring that would benefit DRB's NDS

representative Rasoli (reftel C).

Parliamentary Views on Indefinite Detention

¶3. (S/NF) Since reftel C, post has continued to explore parliamentary views on possible legislation regarding indefinite detention without trial. Our assessment remains that parliament would act decisively against an effort to establish a security detention framework. We do not believe we have more than a handful of natural or potential allies in parliament on this issue; the general mood is to let bygones be bygones. We believe any legislation proposing a means for indefinite detention without trial would be voted down by a very large margin and see no way the head of the legislature could take steps to avoid inflammatory debate. If debate began, we would expect it to be televised and contentious and would not expect the outcome to be in our favor. Since the vast majority of detainees are Pashtun, any indefinite detention-related legislation would be viewed by many parliamentarians through an ethnic lens. There are no parliamentary procedures that would insulate a policy implemented by presidential executive order from parliamentary review.

Relay of Evidentiary Files -- Administrative Issues

¶4. (S/NF) On April 1, Polmiloffs passed to ONSC officials GOA notes in Dari taken by GOA prosecutorial teams at the Bagram Theater Internment Facility (BTIF) for all remaining cases on

the BTIF Order of Merit list of planned transfers. At CSTC-A's request, we also relayed to ONSC English-language files classified "Secret/Releasable to GOA" for all Guantanamo Bay (GTMO) detainees as well as Pashto translations of 28 of these files. As indicated in reftel B, ONSC has said that while they could accept these first Pashto files, files must be translated into Dari to be of most use. CSTC-A has now begun translation of the remaining GTMO files into Dari. ONSC officials and polmiloffs discussed security and tracking of evidentiary files in some detail and agreed how to present these issues to the Detainee Review Board (DRB). Polmiloffs relayed a hard copy of the Detainee Tracking Chart spreadsheet that has now been shared electronically with CSTC-A, CJTF-82, SCA, WCI, and OSD-Policy; the chart tracks which type of evidence is relayed when and will also be used to track the status of transferred BTIF and GTMO cases.

¶5. (S/NF) ONSC officials asked that the USG provide three paper copies of each evidentiary file along with an electronic copy and advised that ONSC would retain the latter and one paper copy and pass the other two paper copies to the National Directorate of Security (NDS) and Ministry of Interior DRB representatives. ONSC later advised that they could not photocopy the 244 GOA evidentiary files or the GTMO evidence; post will track the dates when the requested copies are relayed. The GOA administrative capacity for organizing evidentiary material appears to be very limited.

¶6. (S/NF) On 1 and 7 April ONSC's Salehi again told polmiloff that the quality of both Dari and Pashto translations received is weak, but he has not yet provided requested copies of problematic passages or documents so that quality control issues can be addressed.

Detainee Review Board Convenes for Second Time

¶7. (S/NF) The full Detainee Review Board (DRB) listed in reftel C, including the Ministry of Justice (MOJ) representative who missed the initial meeting, convened on April 8. Malik Quraishi and Zia Salehi attended for ONSC.

CSTC-A Chief of Detainee Operations and Chief of Operational Law, deputy polmilcouns and polmiloff also attended. DRB representatives discussed potential transfer and prosecutorial issues extensively. Specifically, they requested that the US give the GOA the opportunity to approve any anticipated releases of detainees from the BTIF or GTMO. The Attorney General's representative suggested that priority for transfer be given to detainees who have spent the most time in detention (USG attendees clarified that time in detention is one of several factors in prioritizing transfers), that the most prosecutable cases be transferred early, and that there was a need for MOI and MOD to investigate any cases ahead of possible release. US attendees recapped the history of the GOA-USG agreement, clarified that the ANDF is a detention facility, and reiterated assurances given the Defense Minister (reftel B) that MOD will not bear the prosecutorial burden for detainee cases. NDS stressed that they have enough investigators and that one person will handle one-two detainee cases. Attendees also said they did not believe there would be a conflict between assignment of cases to the national security or civil courts but agreed the Supreme Court could adjudicate if one occurred.

¶8. (S/NF) Several DRB representatives stated that they had not been informed by ONSC after the April 2 detainee transfer occurred. ONSC, which was informed by CSTC-A on April 2, acknowledged the DRB should have been informed and committed to notifying all DRB members after each transfer occurs. The DRB agreed to consider April 8 as the date the "clock would start ticking" on the pretrial detention period for the newly transferred 12 detainees and the date the investigations would officially begin. The Supreme Court representative expressed agreement with this approach while noting that such issues ultimately could not be answered definitively until

raised before a court. NDS noted after the meeting that the Supreme Court could be asked to extend the pretrial period for a given case. Polmiloff stressed to the entire DRB the USG's interest in receiving progress reports on the status of cases, and the DRB agreed to reconvene before the end of the 30-day pretrial detention period. Polmiloff oriented the DRB to the types of information we are tracking via the Detainee Tracking Chart and the types of evidence that will be provided to GOA. Representatives asked if any physical evidence shown in evidentiary photographs will be relayed; CSTC-A has confirmed with CJTF-82 that there is no other physical evidence to transfer, and we will advise the DRB of this at the next meeting.

¶9. (S/NF) The processes involved in GOA pretrial investigation are opaque at this point. While we know NDS and MOI have reviewed the files of the first 12 transferred, it is unclear how much investigation can be done before a detainee is physically transferred. We discovered NDS was expecting an official letter from the ONSC tasking it to investigate, which ONSC has agreed to provide. The DRB was asked about the mechanism for notifying detainees of decisions about their cases and what documents the ANDF commander will receive to support detainee transfer for trial or release. An MOD representative clarified that the Criminal Code outlines procedures for investigators and prosecutors to inform the detainee with defense counsel present.

¶10. (S/NF) Many procedural issues related to detainee transfers still require discussion and establishment, but we believe GOA efforts are gaining traction.

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